

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

**ROGER WILSON, ZACHARY CHASTAIN  
& TRAVIS DELDUCA,**

**Plaintiff,**

**vs.**

**1400 NORTHSIDE DRIVE, INC. d/b/a  
SWINGING RICHARDS and C.B.  
JONES II,**

**Defendants.**

Civil Action No. 1:15-cv-4453-SCJ

JURY TRIAL DEMANDED

**PLAINTIFF'S ANSWER TO COUNTERCLAIM OF  
DEFENDANTS 1400 NORTHSIDE DRIVE, INC. AND C.B. JONES, II**

Plaintiffs Roger Wilson, Zachary Chastain, and Travis Delduca, by and through the undersigned counsel and pursuant to Fed. R. Civ. P. 8(c) and 12, hereby submits their Answer to the Counterclaims of Defendants 1400 Northside Drive, Inc. and C.B. Jones, II. [Dkt. 11] and shows the Court as follows:

**RESPONSES TO NUMBERED PARAGRAPHS**

1.

Plaintiffs admit the allegations contained in Paragraph 1 of the Counterclaim.

2.

Plaintiffs deny the allegations contained in Paragraph 2 of the Counterclaim.

3.

Plaintiffs deny the allegations contained in Paragraph 3 of the Counterclaim.

4.

Plaintiffs deny the allegations contained in Paragraph 4 of the Counterclaim.

5.

Plaintiffs deny the allegations contained in Paragraph 5 of the Counterclaim as stated.

6.

Plaintiffs deny the allegations contained in Paragraph 6 of the Counterclaim.

7.

Plaintiffs deny the allegations contained in Paragraph 7 of the Counterclaim.

8.

Plaintiffs deny the allegations contained in Paragraph 8 of the Counterclaim.

9.

Plaintiffs deny the allegations contained in Paragraph 9 of the Counterclaim.

10.

Plaintiffs deny the allegations contained in Paragraph 10 of the Counterclaim.

## **AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE**

The Counterclaim fails to state a cause of action upon which the relief requested can be granted.

### **SECOND DEFENSE**

The Counterclaim is barred by the doctrines of estoppel, waiver, and unclean hands and/or because of Defendant's conduct or actions.

### **THIRD DEFENSE**

The Counterclaim is barred insofar as it arises from oral or written contracts of adhesion drafted or created by Defendants with the central purpose of violation federal law. Additionally, Defendants alleged agreements would be unenforceable as constituting a waiver of Plaintiffs' rights under the Fair Labor Standards Act.

### **FOURTH DEFENSE**

The Counterclaim is barred insofar as it arises from oral or written contracts that are procedurally and/or substantively unconscionable.

### **FIFTH DEFENSE**

The Counterclaim is barred insofar as it constitutes unlawful retaliation for conduct protected by the Fair Labor Standards Act.

## SIXTH DEFENSE

The Counterclaim is barred because payments from customers to Plaintiffs were gratuities, not service charges.

Plaintiffs reserve the right to assert additional defenses that future investigation and discovery may reveal to be applicable.

WHEREFORE, having fully answered Defendants' Counterclaim and having pled their defenses, Plaintiffs respectfully ask the Court;

- (a) To dismiss the Counterclaim in its entirety;
- (b) To enter final judgment in favor of Plaintiff and against Defendants;
- (c) To award Plaintiffs their attorneys' fees and the costs of litigation as may be appropriate under applicable law; and
- (d) To award Plaintiffs such other relief as is just and equitable.

Respectfully submitted this 19th day of May 2016.

**DELONG, CALDWELL, BRIDGERS,  
FITZPATRICK & BENJAMIN, LLC**

3100 Centennial Tower  
101 Marietta Street, NW  
Atlanta, Georgia 30303  
(404) 979-3150 Telephone  
(404) 979-3170 Facsimile  
[benjamin@dcbflegal.com](mailto:benjamin@dcbflegal.com)  
[matthew.herrington@dcbflegal.com](mailto:matthew.herrington@dcbflegal.com)

/s/ Matthew W. Herrington  
Mitchell D. Benjamin  
Georgia Bar No. 049888  
Matthew W. Herrington  
Georgia Bar No. 275411  
  
Attorneys for Plaintiffs

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**Certificate of Service**

I hereby certify that on this day I caused the foregoing document to be filed with the Clerk via the Court's CM/ECF system, thereby ensuring electronic service upon all counsel of record.

Dated: May 19, 2016.

/s/ Matthew W. Herrington  
Matthew W. Herrington  
Georgia Bar No. 275411